

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

SUP:

Apr 23

DARRELL EVANS,

Plaintiff,

v.

DISTRICT OF COLUMBIA DEPT.
OF HEALTH,

Defendant.

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Case No. 01ca1347
Calendar 9
Judge Duncan-Peters
Courtroom: 516

OFFICE OF GENERAL COUNSEL
2001 APR 26 P 3:58

ORDER AFFIRMING THE DEPARTMENT OF HEALTH'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL ORDER

OFFICE OF
ADJUDICATION AND HEARINGS

2001 APR 27 A 9:56

This matter comes before the Court upon consideration of Plaintiff Darrell Evans' February 16, 2001 Complaint appealing the February 9, 2001, Findings of Fact, Conclusions of Law and Final Order (hereinafter "Final Order") of Administrative Judge John P. Dean of the Department of Health Office of Adjudication and Hearings in District of Columbia Department of Health v. Darrell Evans, Case No. A-01-80043.¹ In his Final Order, Administrative Judge Dean found that the Plaintiff's dog should be put to sleep for having bitten a person on December 1, 2000. The Plaintiff challenges that determination on the grounds that the Final Order was based on insufficient evidence and testimony that was not credible.

BACKGROUND

On January 19, 2001, Administrative Judge Dean convened an

¹ The Court notes that although chambers staff spoke with the Plaintiff on three occasions and advised him that he could file a brief up to and including April 18, 2001, he has failed to file a brief in this matter in support of his appeal.

evidentiary hearing to determine if "chico," a dog owned by Plaintiff, was a "dangerous dog" within the meaning of D.C. Code § 6-1021.(1)(A)(i). After concluding that Chico was a "dangerous dog," Administrative Judge Dean concluded that Plaintiff's dog would be a significant threat to the public health if returned to Plaintiff. Pursuant to D.C. Code § 6-1021.3, the Government was permitted to humanely destroy Plaintiff's dog. On February 16, 2001, Plaintiff filed his appeal of Administrative Judge Dean's Final Order under § 6-1-21.2. On February 21, 2001, the Hon. Eugene N. Hamilton entered a stay prohibiting the District of Columbia from destroying Plaintiff's dog until the Court had an opportunity to decide Plaintiff's appeal.

STANDARD OF REVIEW

The Court reviews the Final Order using a *de novo* standard of review. See D.C. Code § 6-1021.2 (e) (2000).

ANALYSIS

D.C. Code § 6-1021.2 (a) provides that, "[i]f the Mayor has probable cause to believe that a dog is a dangerous dog, the Mayor may convene a hearing for the purpose of determining whether the dog in question shall be declared a dangerous dog and to determine if the dog would constitute a significant threat to the public health and safety if returned to its owner."

Based upon an evidentiary hearing held on January 19, 2001,² Administrative Judge Dean found, by a preponderance of the evidence, that the Plaintiff's dog attacked Ms. Vonda Acty on December 1, 2000 without provocation.

In December 1, 2000, Ms. Acty was attacked by a dog in an alley next to the Plaintiff's home. Ms. Acty testified that the attack was unprovoked. No evidence controverts her testimony. The dog bit Ms. Acty on her left leg and right foot, partially severing her right little toe. Neighbors eventually came to her rescue and beat the dog off of Ms. Acty. Ms. Acty is the next door neighbor of the Plaintiff and identified the dog as the Plaintiff's dog. That afternoon, an animal control officer impounded the Plaintiff's dog.

Mr. Evans testified that on the day in question his dog was with him in the house except for the period from 10:00 a.m. to 10:30 a.m. when he walked the dog. When Mr. Evans left for work (Administrative Judge Dean found that Mr. Evans left for work at approximately 12:45 pm.), he chained his dog to a post in his basement. Mr. Evans' cousin, Mr. Thorne, who resided in the same house as the Plaintiff, testified that the dog remained chained in the basement until the animal control officer arrived sometime

² Administrative Judge Dean left the record open until February 2, 2001 "to allow [the Plaintiff] to submit additional evidence concerning his ability to comply with the conditions specified in D.C. Code §§ 6-1021.4 and 6-1021.5 in the event of a ruling that [his dog] was a dangerous dog." (Final Order at 2.) Mr. Evans did not submit any additional testimony.

between 2:00 and 3:00 pm. Mr. Evans, accordingly, argued that his dog could not have been the attacking dog.

Administrative Judge Dean had doubts about the credibility of Ms. Acty's identification of the dog and found that, by itself, her testimony was insufficient to support a finding that Mr. Evans' dog was the one that attacked her. Additional evidence, however, pointed to Mr. Evans' dog as the attacking dog. Specifically, the animal control officer, Mr. Haisley, testified that he responded to the scene on the day of the attack and found the Plaintiff's dog with blood on its chest and forelegs. Administrative Judge Dean was unpersuaded by the alternative explanation for the presence of that blood on the Plaintiff's dog offered by Mr. Evans through the testimony of his cousin, Mr. Thorne. Mr. Thorne testified that the blood was the dog's own blood and was shed as a result of the dog biting the pole of the animal control officer. Administrative Judge Dean, however, believed the testimony of Mr. Haisley that he observed the blood on the dog prior to using the pole on the dog. Additionally, Mr. Evans testified that he saw blood on his kitchen floor when he returned home that evening, blood that could not be accounted for according to the explanation offered by Mr. Thorne.

The Court finds that the Department of Health had probable cause to believe that the Plaintiff's dog was a dangerous dog. A "dangerous dog" is defined in D.C Code §6-1021.1(A)(i) as a dog that "[h]as bitten or attacked a person . . . without provocation. The Court concurs with the determination

of Administrative Judge Dean that the Plaintiff's dog bit Ms. Acty without provocation.

D.C. Code § 6-1021.3 authorizes the destruction of a "dangerous dog" if there is a determination (as required under D.C. Code § 6-1021.2) that it would be a "significant threat" to public health and safety if returned to its owner. A dog owner's failure to satisfy the mandatory requirements of D.C. Code §§ 6-1021.4, 6-1021.5 demonstrates that the dog is a "significant threat" when the dog has a history of or at least one unprovoked attack. Administrative Judge Dean found that the Plaintiff failed to comply with D.C. Code §§ 6-1021.4(2) (requiring a valid license for the dog), 6-1021.4(4) (requiring the written permission of the property owner where the dog will be kept), 6-1021.4(6) (requiring the owner to post a warning sign), and 6-1021.4(7) (requiring the owner to obtain liability insurance). Administrative Judge Dean, therefore, concluded that there would be a significant threat to public health and safety if Plaintiff's dog was returned to him.

Based upon the evidence presented at the January 19, 2001 evidentiary hearing, the Court finds that Administrative Judge Dean correctly concluded that the Plaintiff's dog was a "dangerous dog," that there would be a significant threat to public health and safety if Plaintiff's dog was returned to the Plaintiff, and that the District of Columbia is permitted to humanely destroy the Plaintiff's dog.

For the foregoing reasons it is this 20th day of April, 2001,

ORDERED that the Department of Health's Final Order is hereby **AFFIRMED**. The District of Columbia may, therefore, proceed to humanely destroy the Plaintiff's dog.

Stephanie Duncan-Peters
Stephanie Duncan-Peters
Associate Judge
(Signed in chambers)

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